

**NATIONAL ASSOCIATION OF
COMMUNITY LEGAL CENTRES
CONFERENCE**

KEYNOTE ADDRESS

by

**The Honourable Justice Alastair Nicholson AO RFD
Chief Justice
Family Court of Australia**

0930
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Introduction

Thank you for inviting me to speak to you today. I am very aware of the valuable contribution made by salaried and volunteer lawyers, paralegals, social workers and students working in Community Legal Centres. You deal constantly with the diverse legal problems of people who are disadvantaged, socially excluded and powerless and for whom access to justice has little practical significance. At a time of savage funding cuts to legal aid and governmental threats to “rationalise” organisations such as yours, it is imperative that there be widespread recognition of the quantity and quality of what you do, at what I suspect is a low per capita cost. Your community education work, reform interests, information dissemination and recognition of the diverse needs of culturally and geographically people are greatly needed.

I have seen figures which indicate that several years ago Community Legal Centres collectively assisted 300,000 people across the country¹. I have also seen the Centres described as a “success story” which may be threatened by future competition from the private profession, legal aid commissions, other welfare organisations and each other at a time, (the authors point out), when poverty is increasing and legal aid commissions have fewer resources to help those in need².

I am well aware of the enormous assistance that you give to people with family law problems, who are usually those who need assistance most, and I am equally aware of the sense of frustration that many of you feel at the limitations upon what you can do for people who are in real need. That frustration must be greatly increased when you realise that you are the only organisations that are willing to assist many of these people.

¹ (1997) National Association of Community Legal Centres, Annual Report.

It is in this context that I have read with a degree of amazement that the Government is planning to “rationalise” and “centralise” community legal services. I had been under the impression that one of the really valuable things about your services was that they were locally and community based. I had also thought that these were the last sort of services in need of rationalisation and centralisation on economic grounds because you were largely staffed by volunteers.

I had thought that members of the community found it of enormous assistance to be able to visit a local centre and receive assistance and I had also thought that one of the reasons that you were able to attract volunteers was because it was possible for them to give of their services at a location reasonably close to where they lived.

Obviously I lack the prescience of those in Government and the bureaucrats and accountants advising them who are proposing to bring this brave new world to community legal services. It is to be hoped that some re-thinking takes place about these proposals and about the value of providing these services at a local level. By value I do not mean value as measured in cost to Government, but value in terms of community values of a less tangible but much more important nature.

I am delighted to have this opportunity to address you, albeit briefly, on some issues facing family law generally and the Family Court particularly in the next few years.

² Zemans, F and Thomas, A (1999 “Can Community Clinics Survive? A Comparative Study of Law Centres in Australia, Ontario and England” in The Transformation of Legal Aid, editors Regan, F., Paterson, A., Goriely T., and Fleming, D., Oxford University Press.

Review of the Civil Justice System and Family Court Initiatives

Firstly I should comment on the recent release of the Australian Law Reform Commission discussion paper, “*Review of the Civil Justice System*” and the negative publicity the Family Court received as a consequence. The launch of the paper actually preceded the dissemination of the discussion paper by a couple of weeks, and the print media therefore focussed heavily on the ALRC’s media release which was more inflammatory than the final product. The criticisms focussed on our case management system, claiming that it is inflexible and unwieldy, and that delays and poor compliance with directions and orders are attributable to its requirements. These and other criticisms were naturally picked up by the media, who sought to get mileage out of the issue by drawing distinctions between the operation of the Federal and Family Courts.

If I were reading the newspaper accounts as someone who was not familiar with the manner in which the Family Court operates, I must confess I would probably think of it as an unwieldy monolithic organisation which showed little interest in adapting to changing circumstances. I hope I can convince you, as someone who is familiar with it, that the Court is actually a very different body from that described by the ALRC.

I should say also that the Court assisted the ALRC in the research, which supposedly underpinned the Commission’s findings and recommendations. The Court drew attention to mistakes in the text and reliance on outdated data in previous drafts but regrettably, the report is still incorrect in many ways and also contains out of date information.

Those of you who were able to attend the briefing which I and others provided last evening on the work of the Future Directions Committee will be aware that the Family Court has for

some time been undertaking a number of projects which are directed at the improvement of our services to families.

That Committee is designing and coordinating many initiatives and developing new ones, including case management changes, in consultation with the legal profession, legal aid authorities and yourselves, among others. Ironically, most of the matters raised by the ALRC as issues that the Court should face were in fact also identified for the ALRC **by the Court** as matters already receiving attention by the Future Directions Committee.

The Court's recently completed strategic plan was developed in consultation with the legal profession, the Court's staff and importantly, the Court's own clients. For the first time in any Australian court, judges actually sat down with litigants and listened to their complaints and suggestions. As part of the process the Court also engaged independent consultants KPMG to study its processes and make recommendations for improvement.

All this is not to say that the Court cannot improve and indeed the reason that we have embarked upon these programmes is evidence of the fact that we are determined to do so.

In terms of delay, the Court has for some time been concerned that defended matters take far too long to get to trial, delays in some parts of the country being more significant than in others. This situation has been exacerbated by budgetary constraints and a reluctance by the Government to provide timely replacements when judges retire. However several months ago the judges delegated power in interim children's matters to a newly appointed category of senior registrars, and this has already been shown to have reduced waiting times to trial in this important area and has freed up judges to hear trials rather than interim matters.

The delays, although a serious issue, also involve a very small proportion of cases. Both the ALRC and the Court's consultants KPMG show that the vast majority of family disputes are dealt with in short periods of time. The Commission's own data show that 80% of all contested matters were finalised in less than 12 months, and KPMG found that 70 % of cases are resolved within 2 to 4 months of filing.

It must be remembered that the Family Court opens 58,000 files a year, compared with some 3,500 for the Federal Court, but they have essentially the same number of judges. It must be obvious that the sheer volume of applications calls for different and less individualised case management techniques than can be employed in low volume courts such as the Federal Court.

As you will be only too well aware, the tightening of the legal aid budget and the consequential increase in litigants in person numbers has also provided a number of challenges for us all. For the Court it appears to be undeniable that settlement opportunities at interlocutory and other stages are seriously reduced when one or both of the parties is self represented. Whilst I am concerned that people without representation may decide not to continue with a legitimate claim, those who conduct their own trials often take far longer to do so and, understandably, have far less understanding of the relevant issues than do legal practitioners. The Family Court – as do other courts – struggles with these problems. The ALRC itself found that 41% of the Family Court files it examined contained one or more unrepresented parties. This compared with 18% in the Federal Court.

Just to let you know briefly what else has been happening in the Court in recent years, it attempted to simplify its procedures by abolishing pleadings and introducing modern user friendly, plain English forms, some in a tick a box format. It has also introduced new techniques for dealing with the problems faced by parents after separation, including group

counselling sessions, and is conducting pilots in its Parramatta and Melbourne Registries dealing with integrated client services and the management of cases involving child sex abuse respectively.

Many of our respective clients have had their own lives, and those of their children, blighted by family violence. Whilst we cannot undo the past, I see the Court's responsibility as including the protection of its clients wherever and whenever possible and as ensuring that there is nothing in its operations which may exacerbate the situation of vulnerable women and children. In 1993 I implemented a family violence policy which in turn is complemented by guidelines which all staff are required to follow. Signs are provided in all registries which encourage people to disclose any fear of violence to staff, and a segment on family violence and how the court can respond to it is included in the information sessions which clients must attend before filing an application other than for divorce. Women can be escorted into and out of buildings and where the Court is aware of fears, it frequently makes arrangements to keep the parties separate at all stages of their contact with the Court. Telephone and video conferencing facilities are used wherever possible for cases which go to trial.

Unfortunately, even measures such as these cannot prevent determined perpetrators and many women are still at risk before and after they leave Court buildings.

I am very much open to suggestions as to how we can improve this process and would be happy to hear from any of you that might have suggestions that would assist.

Telephone and video conferencing also allow those in remote areas to have access to Court services which otherwise they may miss out on altogether, or have to wait some time for and also are of assistance in cases involving violence. We are in the process of extending the availability of video conferencing, taking full advantage of modern technology and I am

hopeful of offering a much more extensive service within the next 12 months. Its value is undeniable and I have personally taken advantage of it sitting in Hobart and hearing and seeing witnesses give evidence from Mildura in Victoria and Adelaide in South Australia.

I am pleased to see that the Queensland Government is considering its introduction to regional courts in this State. Victoria has an extensive and most effective system that we have also been able to take advantage of and I see much room for co-operation between State and Federal Courts in this regard.

I have recently received reports on trial management and the enforcement of compliance with procedural orders, which will be implemented after discussions in the coming weeks. The Court also has programs to assist indigenous communities and has employed indigenous family consultants in Queensland and the Northern Territory with considerable success.

The Court is also aware of the needs of ethnic communities, and conducts divorce proceedings in Cantonese and Mandarin. It produces and disseminates pamphlets describing its services in 16 languages other than English, and audiotapes in 5 other languages. It employs ethnic liaison workers in Victoria and is also developing programs in conjunction with the Ethnic Affairs Council of New South Wales. It has held seminars in Sydney and Melbourne to improve understanding of the value systems of Asian and African families.

Tomorrow in Melbourne I will be launching a new publication that will I believe be of interest to Community Legal Centres and the communities that they serve, and which will further the aim of de-mystifying the Court.

In all, I believe that the Australian Law Reform Commission's poorly researched discussion paper and already outdated and sometimes misguided suggestions do little to assist a system

under enormous pressure and with scant resources. When the discussion paper is analysed, what it really seems to be critical of so far as the Court is concerned is its emphasis on mediation and conciliation and the fact that it treats litigation as a last resort in family matters. This seems to me to be particularly retrograde and inappropriate.

Legislative Issues

Much is going on in the legislative 'pipeline' as I'm sure Stephen Bourke will affirm. The Federal Magistrates Bill has been introduced into Parliament and the Family Law Amendment Bill is expected to be introduced in a few weeks time. The Federal Magistrates Bill has now been referred to the Senate Legal and Constitutional Committee which is required to report by the end of September. Further back we have the prospect of a Bill dealing with the reform of property.

Whilst no one obviously can predict how many of these Bills or other initiatives may come to fruition in this, or succeeding, years, they signify the Government's intention to effect change in a number of areas. Independently of these proposals, there is much the Family Court can do and is doing to initiate improvements to its own processes and procedures.

Cross Vesting

I would like to refer briefly first to cross vesting, which is a technical area but one of consequence given the High Court's decision in the Wakim case.³

Cross vesting was a device which allowed associated disputes which would usually have to be heard in two separate courts to be consolidated into one court. It was used most commonly in family law where de facto couples were disputing both property and children's issues, and

also where damages for assault were sought in property disputes. In *Wakim* the High Court decided that the States cannot vest State jurisdiction in Federal Courts and neither can the Commonwealth consent to the vesting of State jurisdiction in Federal Courts.

The overall workload of the Family Court has not been significantly affected by the High Court's rejection of cross vesting, although the consequences are quite serious for unmarried couples with combined children's and property disputes and those who seek damages in tort or contract. We are trying to place clients with these dual disputes on notice of the effects of the decision by searching files, interrogating our Blackstone data base and requesting information from practitioners via Law Societies and other professional organisations.

Previously cross-vested matters must now be the subject of separate proceedings in a State and Federal (i.e. Family) court, with all the additional costs and confusion this brings.

Contrary to the information contained in several newspaper editorials following the delivery of the judgment the Family Court's ability to deal with disputes involving ex nuptial children is unaffected by the decision. The Family Court has this jurisdiction as a result of the States referring their powers to the Commonwealth in the late 1980s, not as a result of cross vesting.

Important Court Developments

The Magellan Pilot Program

I mentioned briefly earlier some ways in which the Family Court is providing differential management of cases involving child abuse allegations. Several years ago Professor Thea Brown and her colleagues at Monash University conducted research on the interface between the Victorian Children's Court and the Family Court. This empirical work concluded that

³ (1999) 163 ALR 270.

child protection was part of the Family Court's core business, and raised concerns about the time taken to resolve disputes involving child abuse allegations and the numbers of interventions for children that was a feature of these cases. These findings, verified by our own concerns, prompted me to establish a Melbourne committee to pilot new strategies for dealing with these troublesome cases. This is what is known as the Magellan program.

The Magellan pilot involves 100 cases filed in either the Melbourne or Dandenong registries in which serious sexual or physical abuse allegations have been raised. Such cases are managed within the Court by a designated team of 2 judges, together with a registrar and two counsellors, the matters are brought on at clearly defined stages and a child representative is appointed automatically at the first mention before the judge. In addition, in each case steps are taken to ensure the prompt production of a thorough and informative report by the investigating child welfare authority. Such special case management amounts to a 'front-loading' of resources and has involved considerable co-operation with the Commonwealth Attorney-General's Department, Victoria Legal Aid and the Victorian Department of Human Services.

Early evaluation data and statistics are suggesting distinct benefits for the families involved, for the Court and for legal aid resources. Cases are resolving sooner in the case management process on the basis of better information at that earlier stage, with few proceeding to defended final hearings. At this stage 66 cases have been settled, 11 are listed for a final hearing and 7 have gone to judgment.

The pilot is drawing to a conclusion and we will await the report of the evaluation with much interest.

Mediation Initiatives

Mediation is now becoming more widely available across the Court and will soon become a core feature of our PDR services. In January this year, as part of mediation focussed strategy, I appointed all counsellors and deputy registrars Court mediators. This was based on a recognition that they had had at least as much relevant experience as those accredited as mediators in community based organisations.

The mediation strategy is in the process of being implemented, and training and supervision details are being finalised. Single mediation in single issue matters has been endorsed as the preferred model in most cases. New mediators will receive a minimum of 10 hours supervised training before mediating.

The extension of mediation will provide more choice to clients in a far wider number of registries, including those in provincial and more remote areas.

Changes Proposed by Government

Family Law Amendment Bill

The Family Law Amendment Bill, among other things, seeks to implement the Attorney General's earlier announcement that the Government intended to enable parties to enter into financial agreements that will effectively oust the jurisdiction of courts to make orders inconsistent with those agreements. Such agreements may be made before, during and after marriage or relationship breakdown.

I am concerned that there is inadequate awareness of the sweeping nature of the changes these proposals will make to the existing law, and some of the pitfalls involved.

Under current law, a pre-marital agreement has no legal effect. The Court may have regard to it as expressing the intention of the parties at the time that it was made and perhaps giving some useful indication as to the nature and value of the assets that they have brought into the relationship.

Similar considerations apply to an agreement made during the relationship or after it has terminated unless they are made the subject of a consent order or are approved under s 87 of the Family Law Act. In practice, the vast majority of arrangements are made the subject of a consent order and in those circumstances the Court must be satisfied that "in all the circumstances it is just and equitable to make the order". In the case of an order approving an agreement under s 87, the Court must be satisfied that the provisions of the agreement with respect to financial matters are "proper".

These provisions provide very real protection against unconscionable or unfair conduct. Once final orders are made, they can only be set aside if one or more of the matters contained in s79A is established, which include: a miscarriage of justice by reason of fraud, duress, suppression of evidence; the giving of false evidence; or "any other circumstance". (emphasis added).

The Government's proposal will remove this protection. It will mean that earlier acquired property can be quarantined and that the parties can agree prior to the marriage as to the disposition of whatever property they acquire during the course of the marriage.

The great difficulty about pre-marital agreements is the risk of unequal bargaining power and lack of objectivity. For the first time in the history of this country, agreements in relation to marriage will be treated as commercial contracts but without a number of the significant protections that attach to a commercial contract. For example, non-disclosure of assets will be irrelevant unless the other party can prove fraud which is notoriously difficult.

It is worth taking a moment to consider why the law has traditionally treated contracts in relation to marriage with great caution. Historically, of course, it was the men who took all in relation to a marriage, including all of the property of the woman.

The obvious injustice of this situation was recognised early this century with the passage of Married Womens Property legislation. The law has hitherto been cautious about taking this issue of equality any further. There are I believe several reasons for this.

First, the law has recognised that in most marriages there is an economic imbalance between men and women. That still remains the case although changes are taking place, but not sufficient to significantly alter this imbalance.

Secondly, there is a community interest in ensuring that property is distributed in such a way as to minimise the need for children and parties to a marriage (usually women) to be supported from the public purse. This problem has been modified, but not eliminated by child support legislation, which does not address the limitation on the earning capacity of the principal carer, nor the obligation to provide a home for the children.

Thirdly, there has been a recognition that a contract in relation to marriage is something different from a normal commercial contract. The parties are rarely at arms length and there

are considerable emotional issues involved. There may also be great power imbalances between the parties or their respective families.

Finally, in relation to pre-marriage contracts in particular, the parties are looking at an indefinite relationship which may or may not involve children and which may persist for 50 years or more. There are few if any commercial contracts that fall into this category.

In my view, for the above reasons an agreement to marry should not be construed as being equivalent to a commercial contract, nor should ordinary commercial considerations govern such an agreement.

It seems unlikely that many couples will avail themselves of the option of entering into an agreement during the marriage while their relationship remains a happy one. In the case of violent or abusive marriages there may be extreme pressure to enter into such an agreement and I doubt that the provision for independent advice is likely to overcome such pressure. At the same time, proof of duress in such cases is notoriously difficult.

As to the post-relationship situation, the argument may gain some strength. The argument most frequently advanced in support of these agreements is that they enable people entering into second and subsequent marriages to protect their assets from the first. While this has some validity, I consider that the disadvantages outweigh the advantages.

Another concern is that there may be an increase in litigation, with countless arguments about: the meaning of contracts; whether there was full disclosure at the time that they were made, whether or not this constituted fraud; and whether there has been a change of circumstances since the agreement was made.

Other provisions in the Bill include: a new 3 tiered system for the enforcement of parenting orders which are separated from the enforcement of money orders; a system of arbitration; and amended prohibitions on reporting Family Court proceedings.

Property

I don not intend here to summarise the Government's Discussion paper *Property and Family Law*. It provides two possible reform options which are difficult to describe succinctly, and allows the proposal of various other models or combinations of the 2 proposed. In essence, Option 1 continues the current separate property approach, but provides that the starting point for distribution of the property would be equal, on the assumption that contributions had been made equally. Option 2 would introduce a community of property regime in which communal assets acquired during marriage or cohabitation would be divided equally on marriage breakdown. Both options would allow for the presumption of equality to be departed from in certain circumstances. Neither seem to pay any regard whatever to the children of the marriages in question or their interests.

The Court has responded to the discussion paper. Its response was extremely cautious about the desirability of adopting Option 1, and found nothing to recommend Option 2. The "community of property" approach contained in Option 2, in my view, is so unrealistic as to be unthinkable. It is gender-biased in favour of men and a reversion to the marital regimes of the 18th and 19th centuries.

On this aspect I suspect I will not need to convince you at any great length! The Court argued that the discussion paper generally failed to demonstrate a need for the introduction of such a radical change which would, in any event, be difficult for the community to understand and for the legislation and the Courts to implement in a satisfactory way.

It is interesting that both options place considerable emphasis on notions of **formal** equality, a concept which is frequently very different from **real** equality. While it may be superficially attractive at first sight, the notion that marriage is an equal partnership does not necessarily translate itself into an equal division of assets. Research has demonstrated that such equal divisions rarely compensate for the financial breakdown of marriage.

In many cases such an approach may do a significant injustice to one of the parties, usually the one with the responsibility for the care of the children. Also, the superior economic position of men in our society, and their increased capacity to earn at a higher level than women following relationship breakdown, would usually mean that an equal division would favour them over their former female partner.

Although equality of sharing would be a rebuttable presumption, this may be difficult to explain to members of the public. Anecdotal evidence suggests that expectations of 50/50 division were high after the announcement of the concept of equal sharing contained in the Family Law Reform Bill (No 2). In reality, it is extremely rare for all factors to be so evenly balanced as to call for an equal division of property. The less the amount involved the more likely it is that the primary caregiver of the children will be entitled to a greater share of the meagre property available. I believe that women in particular are likely to suffer injustice as a result of this approach.

In relation to Option 1, the Court agreed that it may be useful to have a legislative indicator to the effect that, as a starting point, contributions should be treated as equal in the general run of marriages. However, it was alert to the difficulties I have mentioned - that this may, in itself, lead to a wide community belief that equal distribution would be the likely outcome in most cases, a result which would frequently be inequitable. The Court therefore urged that the

present structure of section 79 should be maintained and the assertion of equal contributions should appear at the end of the section so as to in no way qualify or inhibit the normally understood steps in the process under s 79. This would emphasise the fact that it is a presumption of equal contributions, not of equal sharing.

The difficulties identified by the Court in relation to Option 2 were numerous, but included: substantial transitional problems; a concern at the exclusion of the nature and extent of any financial or non-financial contributions regardless of their source; a concern at the exclusion of domestic violence as a component of contributions; and the adoption of very complicated superannuation proposals. There was also a recognition that the valuation exercise would be an extremely daunting, and probably expensive, task.

The general tone of the discussion paper suggests that option 2 will “create greater certainty and predictability.” In the Court’s view it seems, conversely, that this option will produce greater uncertainty and result in more litigation, especially in relation to valuations.

Federal Magistracy

The Federal Magistracy Bill is currently being considered by the Senate Legal and Constitutional Affairs Committee, which is required to report at the end of this month. There has been quite a deal of discussion about the Bill in legal circles. The Family Court has appeared before the Senate Committee and has made it very clear that it is opposed to the concept of a separate generalist court being given jurisdiction in this way, but is in no way resistant to the idea that there should be a summary jurisdiction for the disposal of less significant matters. Indeed this occurs already to a significant extent, although there are several serious barriers which limit what can be done and by whom.

For example, the extent to which judges can delegate matters to registrars has been restrained by the High Court's decision in Harris v Caladine,⁴ Judicial Registrars' powers are limited and, as they are not Chapter III appointments, appeals from them are by way of *de novo* review which is expensive and cumbersome.

The main objective of the legislation is to establish a separate Federal Magistracy which will be able to accept both Federal and Family Court work and will have its own structure and administration. The Court's position is that fragmentation of its closely integrated system in the way contemplated will result in a less satisfactory and more expensive service. The potential for public confusion, forum shopping and waste of resources on shuffling matters between courts is high. The funds proposed to be spent on the Federal Magistrates Court could be used far more cost effectively by providing Magistrates within the framework of the Family Court of Australia.

In relation to family law, the Bill gives the new court the power to hear applications for dissolution and nullity of marriage, to decide disputes involving property up to a value of \$300,000 and, in relation to children, to hear contact, maintenance and specific issues applications. With the parties' consent, a Federal Magistrate may also make residence orders in relation to children, and may also decide disputes where the value of the property exceeds \$300,000. Appeals will be to the Family Court and from there only by special leave to the High Court.

A major difficulty about the proposal relates to the area of transfer of jurisdiction and the prohibition on the commencement of matters in one court if they have already commenced in

⁴ (1991) FLC 92-217.

another. These problems would not arise if all matters were to be commenced in one Court, as would be the case if magistrates were to be integrated into the structure of the Family Court of Australia.

The current proposal would appear to lock the dispute in the Court where it originally began and does not even enable the other Court to vary the original orders. There is no provision for the superior court to order the transfer of the dispute to it, but the Bill envisages the transfer of disputes from the Magistrates Court to the FCA at the behest of the Magistrates Court. The decision as to whether or not to order such a transfer is not subject to appeal.

In an attempt to prevent matters being split between different courts the Bill provides that proceedings cannot be brought in the Federal Magistrates Court if proceedings of an associated matters are pending in the Federal or Family Courts. This and other similar provisions suggest a misunderstanding of the nature of the jurisdiction and its capacity to be so divided.

At present the Family Court's case management process is closely integrated with its primary dispute resolution facilities. Matters do not simply proceed through PDR first and, if not settled, go on to litigation. There is frequent movement between the PDR pathway and the litigation pathway, which can occur at all stages of the process. The procedural aspects of case management are largely managed by the Court's Registrars and Deputy Registrars. When issues arise that are beyond the power of those who are not Judges, it is a simple matter within the Court to transfer those quickly to a Judge. Under the proposed arrangements there will have to be a formal transfer between the two Courts and that will not be managed so easily on a same day basis. This will also add to costs and is certain to generate confusion, particularly for litigants in person, that is, those who do not have legal representation.

In summary, the proposal embodies a very complex system which will create jurisdictional difficulties, uncertainty among applicants and necessarily entails expensive and time-consuming overheads.

Since the Government is only speaking initially in terms of a very small number of Federal Magistrates across the country dealing with both Federal and Family Court work, (but primarily the latter) their impacts on our workloads and delays will be minimal.

Let me however make one thing clear. I have been urging successive Attorneys General for years that there is a need to provide a mechanism for the summary determination of appropriate family disputes. Unfortunately, unlike other types of litigation, it is extremely difficult in the initial stages of such a dispute to determine which are appropriate for such a summary determination. That is one very good reason why it is important that all such disputes start and finish in the same court.

The Government's apparent justification for this new proposal is that a new court will have a different culture to that of the Family Court of Australia. No one has as yet successfully identified to me what this statement means. So far as I am concerned, the culture of the Family Court of Australia is to be found in the Family Law Act and at a lesser level in the Court's strategic plan. One of the Court's principal tenets, which is one shared with all other like jurisdictions around the world, so far as I can determine, is that litigation should usually be seen as a last resort and that the Court has a duty to assist parties to resolve their own disputes wherever this is possible.

If what is meant is that the new court will proceed with less formality, there is no doubt that the summary determination of matters enables this to occur more readily and this will happen whether the jurisdiction is exercised within the Court or outside it.

Having said this, I sometimes wonder whether the governmental critics of the Court have ever been near it or observed its workings. There is a real atmosphere within the Court directed at the constructive solution of disputes. While those who criticise the Court are very strident, it may be of interest to you to know that the rate of complaints about the court run at .07% of files opened, which I suggest is an extremely low rate of complaint and considerably lower than the rate of complaint about the political process in this country.

Conclusion

I obviously cannot comment on the way in which the legislative changes foreshadowed by the current Attorney-General will be judged, just as I cannot guess how much of what is proposed will come to fruition, or when. But family law continues to be an area which is closely monitored, commented on and discussed. It is an area where unrealistic expectations of what a legal system can achieve sometimes result in disenchantment and anger. It is an area where human nature and black letter law do not necessarily combine to create harmonious outcomes.